and unloading,[19] and hands employed on a floating dredge [20] have been held to be seamen. Clearly the Federal Employers' Liability Act has been extended to such injured persons as can bring themselves within the term "seamen." In addition, for maritime accidents, they have their remedy in admiralty. However it is to be regretted that Congress did not definitely extend the provisions of the Liability Act to all cases of maritime accidents, and thus settle conclusively the long uncertain question here discussed and bring the last important American jurisdiction within the benefits of the modern compensation principle.

L. H. McK.

JURISDICTION OF PUBLIC SERVICE COMMISSION OVER INTER-UTILITY CONTRACTS.—Under the Pennsylvania Public Service Act [1] every point of contact between the public, as such, and a public service corporation, which has a close relation to duties and liabilities under the act, is subject to regulation by the Public Service Commission. It is sometimes difficult, however, to determine whether there is such a point of contact as will entitle the commission to take jurisdiction, and in this connection it is interesting to note two recent decisions of the Pennsylvania Supreme Court,[2] involving the right of the commission to inquire into the terms of a written contract between two public utilities.

The New Street Bridge Company [3] was incorporated in 1864 under the laws of Pennsylvania, for the purpose of constructing and operating a toll bridge across the Lehigh River in the city of Bethlehem, Pennsylvania. The company made a written contract with the Lehigh Valley Transit Company whereby it was agreed that the transit company should have the sole and exclusive right to cross the bridge with street cars, in consideration of the payment of an annual rental to be determined with relation to the car movement and the number of passengers per car. The transit company filed a complaint with the Pennsylvania Public Service Commission alleging that the rates were unreasonably high, and the commission ordered the rates reduced. The New Street Bridge Company appealed from that order.

The appellant contended that this was a private contract in the nature of a lease, and the commission, therefore, was without juris-

[19] Disbrow v. Walsh Bros., 77 Fed. 607 (1888).

[20] Ellis v. U. S., 206 U. S. 246 (1906).

[1] Act of July 26, 1913, P. L. 1374.

[2] New Street Bridge Company v. Public Service Commission, 114 Atl. 378 (Pa. 1921); Philadelphia City Passenger Railway Co. v. Public Service Commission, 114 Atl. 642 (Pa. 1921).

[3] New Street Bridge Company v. Public Service Commission, *supra.*

diction.[4] In the opinion of the court, however, the contract did not meet the specifications of a lease. To constitute a lease there must be such an unqualified surrender of its property or franchise by the lessor as results in the divestment of all control for operating purposes. In the principal case the court thought that there was no such divestment of control by the bridge company. While the transit company was to have the use of the bridge for the movement of its cars, this use was not exclusive. The bridge company operated over the same right of way and was functioning, to all intents and purposes, as an operating company. It continued to use its bridge as a public highway for the passage of traffic, and, in so doing, was carrying out the purposes for which it was incorporated.

The New Street Bridge Company, therefore, had not leased its franchise or property, but was in fact an operating company doing business directly with the public, and any contract with regard to a rate to be charged to any of its patrons is subject to supervision by the Public Service Commission. This position is in accord with the decisions in other jurisdictions,[5] where it is generally held that a contract by one public utility to furnish its service to another similar utility can be reviewed by the Public Service Commission. This is on the theory that the public interest is involved in these contracts and there is, therefore, such point of contact between the public and the utility furnishing the service, as entitles the commission to take jurisdiction.

While the position of most courts is clear as regards a commission's jurisdiction over inter-utility contracts calling for certain services on the part of one of the utilities, it is not so certain as to what their attitude would be in regard to the regulation of an agreement amounting to a lease of its property and franchise by a public service company, to another public utility. The Pennsylvania Supreme Court decided this question in the recent case of Philadelphia City Passenger Railway Company v. Public Service Commission.[6]

There were originally a number of street railway companies in the city of Philadelphia. These companies leased[7] their fran-

[4] The appellant contended that this case was governed by the commission's decision in the case of City of Pittsburg v. Pittsburg Railways Co., 8 Pa. Corp. R. 441 (1920). In that case certain street railways in the city of Pittsburg had leased their properties and franchises to the Pittsburg Railways Co. It was sought to join the lessors as parties defendant in an action brought against the Pittsburg Railways Co. to determine the reasonableness of its rates. The commission held that by their leases the lessors became non-operating companies, that they had ceased to function as common carriers and were therefore beyond the jurisdiction of the commission.

[5] *Re* St. Louis Light and Power Co., P. U. R., 1919 E, 379 (Ill.); *re* Fayette Light, Ice and Coal Co., P. U. R., 1918 E, 414 (Mo.); Minneapolis and St. Louis Ry. Co. v. Minnesota, 186 U. S. 257 (1901).

[6] Note 1, *supra*.

[7] The lease was executed under authority of Act of May 15, 1895, P. L. 65. The rule is well settled that a public service corporation, which is chartered for the purpose of performing certain public duties, cannot lease its

chises and property to the Union Traction Company, which in turn leased to the Philadelphia Rapid Transit Company. The United Business Men's Association complained before the Public Service Commission that the service and facilities of the lessor companies were inadequate, and that those companies were receiving a grossly excessive return on the value of their properties. The jurisdiction of the commission was contested, and was one of the questions involved in an appeal to the Supreme Court. The court took the position that, by making these leases, the lessor companies thereby became non-functioning corporations and ceased to be operating companies. Only operating companies are capable of furnishing services and facilities at reasonable rates, which the Public Service Act imposes as a duty upon public service companies.[8] Therefore, only operating companies are subject to the commission's jurisdiction in respect to services, facilities or rates. Since by the lease these companies became non-operating corporations, and since the complaint referred only to facilities, services and rates, the commission has no jurisdiction.

It might be urged, however, that the contract between the lessor companies and the lessee affects the rate charged by the lessee, since the rental paid by the Philadelphia Rapid Transit Company may properly be charged against the company's operating expenses and would, therefore, be reflected in the final rate to the public. But the Pennsylvania Supreme Court takes the position that the rentals paid under the lease have no bearing in fixing a fair return. Such rent is not a factor in determining the value of the transit company's property, nor is it to be considered as part of the operating expenses. This does not mean that the leasehold interests have no value in the eyes of the Pennsylvania court. They have a value, but it would seem to be the physical value of the property used rather than a valuation based on fixed charges paid by way of rental for the acquired property or franchise.

In fixing a fair value, commissions in other jurisdictions have taken into consideration leasehold interests.[9] It is not clear, however, whether they base their valuation solely on the physical value of the property used by the corporation, or whether they consider the value of acquired property or franchises as indicated by the fixed rental charges. But it is certain that in some of these jurisdictions the commissions consider these fixed charges as part of

franchise or property without express legislative consent. Central Transport Co. v. Pullman Co., 139 U. S. 24 (1890); Stockton v. C. R. R. of N. J., 50 N. J. Eq. 52, 24 Atl. 964 (1892); Att'y Gen'l v. Haverhill Gaslight Co., 215 Mass. 394, 101 N. E. 1061 (1913).

[8] Art. II, Sec. 1a.

[9] *Re* West Virginia Central Gas Co., P. U. R., 1918 C, 453 (W. Va.): Landon v. City of Lawrence, P. U. R., 1916 B, 331 (Kan.); Campbell v. Hood River Gas Co., P. U. R., 1915 D, 855 (Ore.).

the company's operating expenses.[10] If, therefore, the question involved in the instant case were to come before these commissions it would seem that they would be entitled to take jurisdiction, since these rentals are part of the operating expenses and are therefore an element to be considered in fixing the rate to be charged by the lessee.

In the view adopted by the Pennsylvania court there is no point of contact between the public and the lessor companies, since these fixed charges in no way affect public interest. Whether or not other jurisdictions would reach the same conclusion depends on whether they would consider such rentals an important element in determining the company's operating expenses, and, for that reason, a matter in which public interest is involved. If they take the position that these rentals are to be taken into consideration in determining the rate, there is then a point of contact between the public and the lessor company, and a commission would be justified in taking jurisdiction on that ground. Therefore if a similar case were to come before either the West Virginia or Oregon commission,[11] it is probable that a different conclusion would be reached from that adopted by the Pennylvania court.

W. H. N.

THE CONSTITUTIONALITY OF EMERGENCY LEGISLATION UNDER THE POLICE POWER.—Can a legislature, to meet an emergency, enact temporary legislation under its police power to an extent which would, as a permanent measure, be unconstitutional? The Supreme Court of the United States has apparently rendered an affirmative answer to that question in two recent decisions. These cases involved the constitutionality of the so-called "Emergency Rent Laws;" one [1] being an act of Congress passed for the District of Columbia, the other [2] an act passed by the Legislature of New York. In Block v. Hirsh,[3] where the act of Congress is construed, the facts are briefly as follows: Owing to abnormal housing conditions in the District of Columbia following the war, Congress passed a statute giving a tenant the right, during a period of two years, to remain in possession if his lease expired during that period. A commission was created to determine the amount of rental to be paid for the new term thus created and an appeal could be taken from its decision to the courts. The Supreme Court, by a five to four decision, upheld the constitutionality of this statute.

The police power can be broadly divided into two classes, (1) where the use of property itself is regulated, and (2) where the rate

[10] *Re* West Virginia Central Gas Co., *supra*; Campbell v. Hood, *supra*.

[11] See note 9, *supra*.

[1] Block v. Hirsh, 41 U. S. Sup. Ct. 458 (1921).

[2] Marcus Brown Holding Co. v. Feldman, 41 U. S. Sup. Ct. 465 (1921).

[3] Note 1, *supra*.